

ORIGINAL NEW APPLICATION



0000061471

RECEIVED

BEFORE THE ARIZONA CORPORATION COMMISSION

2006 OCT 25 P 3:41

JEFF HATCH-MILLER  
Chairman

AZ CORP COMMISSION  
DOCUMENT CONTROL

WILLIAM A. MUNDELL  
Commissioner

Arizona Corporation Commission  
**DOCKETED**

MIKE GLEASON  
Commissioner

OCT 25 2006

KRISTIN K. MAYES  
Commissioner

DOCKETED BY	NW
-------------	----

BARRY WONG  
Commissioner

In the Matter of the Application of Level 3  
Communications, LLC for a Limited Waiver of the  
Public Utility Holding Companies and Affiliated  
Interests Rules (A.A.C. R14-2-801 et seq.) and  
Encumbrance of Assets

Docket No. T-03654A-06-0689

**APPLICATION OF LEVEL 3 COMMUNICATIONS, LLC  
FOR A PARTIAL WAIVER OF THE PUBLIC UTILITY HOLDING COMPANIES  
AND AFFILIATED INTERESTS RULES (A.A.C. R14-2-801 et seq.)  
AND ENCUMBRANCE OF ASSETS**

Pursuant to A.A.C. R14-2-806, Level 3 Communications, LLC ("Level 3 LLC" or "Applicant") requests a limited waiver of the Arizona Corporation Commission's ("Commission") Public Utility Holding Companies and Affiliated Interests Rules, A.A.C. R12-2-801 to R12-2-806 (the "Rules"), in connection with certain financing arrangements described more fully in this Application. Specifically, Level 3 Financing, Inc. ("Level 3 Financing" or "Issuer" and together with Level 3 LLC, the "Parties") intends to issue a series of notes to qualified institutional buyers

1 (“Buyers”) in an offering that is exempt from registration under U.S. Federal securities laws.<sup>1</sup> In  
2 the alternative, Level 3 LLC requests Commission approval for, its guarantee of the notes issued  
3 by Level 3 Financing to Buyers pursuant to AAC R14-2-804, as well as any encumbrances of its  
4 assets that may be necessary to secure the financing pursuant to A.R.S. § 40-285.

5 In support of this Application, Applicant states as follows:

6  
7 **INTRODUCTION**

8 Based on its operational revenues, Level 3 LLC is considered a Class A utility and,  
9 therefore, subject to the Rules. The Rules regulate the formation of public utility holding  
10 companies and certain transactions and activities between public service corporations and their  
11 affiliated interests. According to the Commission, the Rules are intended to: (i) prevent the  
12 commingling of utility and non-utility funds; (ii) prohibit cross-subsidization of non-utility  
13 activities by utility ratepayers; (iii) prevent negative impact of non-utility activities on a utility’s  
14 financial credit; and (iv) ensure that the utility and its affiliates provide the Commission with the  
15 information necessary to “carry out its regulatory responsibilities.” See A.C.C. Decision No.  
16 56618.  
17

18 Applicant respectfully submits that, in light of the Rules’ stated purposes, Applicant  
19 should be exempt from the requirements of the Rules for the purposes of the financing  
20 arrangements described herein. As explained below, Applicant operates in a highly competitive  
21 environment that effectively protects customers from activities that will detrimentally affect  
22 service to customers. Moreover, application of the Rules to Applicant for these financing  
23 arrangements would be unreasonably costly and burdensome. Finally, a limited waiver of these  
24  
25

26 

---

<sup>1</sup> Level 3 expects a registration statement will be filed with the SEC within 120 days of closing the transaction.

1 Rules is in the public interest. Therefore, Applicant requests a limited waiver of the Rules as they  
2 may apply to the financing arrangements described below.  
3

4  
5 **DESCRIPTION OF APPLICANT**

6 Level 3 Communications, LLC is a Delaware limited liability company and is a wholly  
7 owned subsidiary of Level 3 Financing, Inc. ("Issuer"), which in turn is a wholly owned  
8 subsidiary of Level 3 Communications, Inc. ("Parent"). All three companies have principal  
9 offices located at 1025 Eldorado Boulevard, Broomfield, CO 80021. Level 3 LLC provides high-  
10 quality voice and data services to carriers, ISPs, and other business customers over its IP-based  
11 network. Level 3 LLC is a non-dominant carrier authorized to provide resold and/or facilities-  
12 based telecommunications services nationwide pursuant to certification, registration or tariff  
13 requirements, or on a deregulated basis. Level 3 LLC is also authorized by the Federal  
14 Communications Commission to provide international and domestic interstate services as a non-  
15 dominant carrier.  
16

17 In Arizona, Level 3 is authorized to provide facilities-based and resale local exchange, toll  
18 and access services pursuant to a certificate granted Decision No. 61737 issued by the  
19 Commission in Docket No. T-03654A-98-0641 on June 4, 1999. Further information concerning  
20 Level 3's legal, technical, managerial and financial qualifications to provide service was  
21 submitted with its application for certification and is, therefore, a matter of public record. Level 3  
22 respectfully requests that the Commission take official notice of that information and incorporate  
23 it herein by reference.  
24  
25  
26

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26

Application should be directed to:

Catherine Wang  
Danielle C. Burt  
Jeffrey R. Strenkowski  
Bingham McCutchen LLP  
3000 K Street, NW, Suite 300  
Washington, DC 20007  
Tel: (202) 373-6000  
Fax: (202) 424-7647  
Email: [catherine.wang@bingham.com](mailto:catherine.wang@bingham.com)  
Email: [danielle.burt@bingham.com](mailto:danielle.burt@bingham.com)  
Email: [jeffrey.strenkowski@bingham.com](mailto:jeffrey.strenkowski@bingham.com)

and

17  
18  
19  
20  
21  
22  
23  
24  
25  
26

1  
2 **DESCRIPTION OF THE FINANCING ARRANGEMENTS**

3 Level 3 LLC will provide a guarantee for a total aggregate amount of up to approximately  
4 \$1.5 billion in notes issued by Level 3 Financing to the qualified institutional buyers (Buyers).<sup>2</sup>  
5 Level 3 Financing will raise these funds in a series of transactions with substantially similar terms  
6 and conditions. Level 3 LLC will execute a guarantee in relation to the notes. Level 3 LLC seeks  
7 a waiver of A.A.C. R14-2-804, or in the alternative approval, to guarantee the notes to be issued  
8 by Level 3 Financing. In addition, Level 3 LLC seeks approval of any encumbrance of its assets  
9 that may be necessary to secure the financing arrangements.<sup>3</sup>  
10

11 Applicant emphasizes that participation in the financing arrangements as a guarantor will  
12 not result in a change in Level 3 LLC's management or in their day-to-day operations in Arizona;  
13 nor will it adversely affect Applicant's operations in Arizona. The funds will be used for general  
14 business purposes, debt reduction and potential acquisition activities. The funds from this  
15 transaction are not needed for the Company's pending purchase of Broadwing Corporation.<sup>4</sup>  
16 Level 3 has \$1.2 billion in cash and marketable securities to complete that transaction. The  
17 financing arrangements will enable Level 3 LLC to bring services to new markets and allow more  
18 consumers to benefit from its competitive services.  
19  
20  
21  
22

23 <sup>2</sup> The notes to be issued will consist of 9.25% fixed rate senior notes due in 2014. The net proceeds to the  
24 Issuer from the offering of the notes are estimated to be up to approximately \$1.5 billion. The notes will be issued in  
a series, with the first issuance in the amount of \$600 million.

25 <sup>3</sup> At this time, Level 3 does not anticipate that the assets will be encumbered.

26 <sup>4</sup> See Docket Nos. T-04176A-0673, T-03654A-06-0673, T-03708A-06-0673, T-03799A-06-0673.

1  
2  
3                   **BASIS FOR LIMITED WAIVER**

4           A.     **The Proposed Transaction Will Not Directly or Indirectly Result in or Cause an**  
5                   **Increase in Applicant's Maximum Rates on File with the Commission for Any Competitive**  
6                   **Service.**

7           The Commission previously has granted partial waivers of the Rules. *See, e.g.,* Decision  
8           No. 64737. In granting such waivers, the Commission determined that only when a transaction  
9           “could directly or indirectly result in or cause an increase in its maximum rate on file with the  
10          Commission for any competitive service” would a company have to make the necessary filings  
11          under the Rules. Applicant requests that the Commission employ a consistent analysis to its  
12          request for a limited waiver of the Rules for Applicant's participation in the financing  
13          arrangements.  
14

15          Level 3 LLC primarily provides competitive wholesale services to other carriers, VoIP  
16          providers, and Internet Service Providers. The market for such services is highly competitive and  
17          prices are set by competition. With every product pricing change initiated by Applicant,  
18          competitors inevitably introduce new services or re-price their service in a manner believed to be  
19          even more attractive to the consumer. Accordingly, Applicant has no incentive or ability to  
20          charge unduly high or above-market prices that could be used to fund or subsidize unregulated  
21          affiliates or to commingle utility and non-utility funds in a manner that is harmful to Arizona  
22          consumers.  
23

24          In addition, immediately following Level 3 LLC's participation in the financing  
25          arrangements, Applicant will continue to offer the services it offers with no change in the rates or  
26

1 terms and conditions of service. Applicant does not anticipate that the financing arrangements  
2 will cause it to increase its maximum rates on file with the Commission for Applicant's  
3 competitive services. Applicant stresses that it primarily provides wholesale services and that  
4 Applicant does not provide services to residential customers.

5  
6 B. Applicant's Participation in the Financing Arrangements is in the Public Interest

7 Approval of the proposed financial arrangements described herein will serve the public  
8 interest in promoting competition among telecommunications carriers by providing Level 3 LLC  
9 with the opportunity to strengthen its competitive position through access to greater financial  
10 resources. Furthermore, by increasing the breadth and scope of telecommunications services  
11 made available through an increased ability to expand Level 3 LLC's operations, greater access to  
12 capital will also strengthen Level 3 LLC's ability to bring competitive telecommunications  
13 services to consumers in the State of Arizona. This financing transaction will be transparent to  
14 consumers and consumers will benefit from the continued receipt of quality telecommunications  
15 services that are priced competitively.  
16

17 **RELIEF REQUESTED**

18 Applicants request a limited waiver of the Rules as follows:

19 1. Waiver of the requirement under A.A.C. R14-2-804(B) that Applicants obtain  
20 Commission approval, to the extent necessary, prior to entering into the arrangements described  
21 herein. In the alternative and pursuant to A.A.C. R14-2-804(B), Applicant requests approval to  
22 guarantee the notes issued by Level 3 Financing.  
23

24 2. Waiver of any other applicable requirements of the Rules as they may apply to the  
25 transaction described herein.  
26

3. Approval of any encumbrance of assets pursuant to A.R.S. § 40-285.

## CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Commission grant a limited waiver as set forth above, or, in the alternative, approve Applicant's guarantee of the notes issued by Level 3 Financing. In addition, Applicant requests approval for any encumbrance of its assets that may be necessary to secure the financings.

RESPECTFULLY SUBMITTED this 25<sup>th</sup> day of October, 2006.

LEWIS AND ROCA LLP

Thomas H. Campbell  
Michael T. Hallam  
40 N. Central Avenue  
Phoenix, Arizona 85044

Attorneys for Applicant

Original and 13 copies of the foregoing filed this 25th day of October, 2006, with:

The Arizona Corporation Commission  
Utilities Division – Docket Control  
1200 W. Washington Street  
Phoenix, Arizona 85007

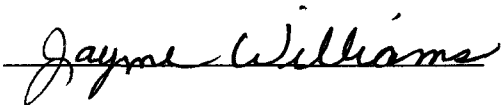


1 COPY of the foregoing hand-  
2 delivered this 25th day of October,  
3 2006, to:

4 Christopher Kempley, Chief Counsel  
5 Legal Department  
6 Arizona Corporation Commission  
7 1200 W. Washington Street  
8 Phoenix, Arizona 85007

9 Ernest Johnson, Director  
10 Utilities Division  
11 Arizona Corporation Commission  
12 1200 W. Washington Street  
13 Phoenix, Arizona 85007

14 Lyn Farmer, Chief Administrative Law Judge  
15 Hearing Division  
16 Arizona Corporation Commission  
17 1200 W. Washington Street  
18 Phoenix, Arizona 85007

19  
20  
21  
22  
23  
24  
25  
26  


**VERIFICATION**

STATE OF COLORADO

§

§

COUNTY OF BROOMFIELD

§

I, William P. Hunt, state that I am Vice President Public Policy for Level 3 Communications, LLC; that I am authorized to make this Verification on behalf of Level 3 Communications, LLC; that the foregoing filing was prepared under my direction and supervision; and that the statements in the foregoing document are true and correct to the best of my knowledge, information, and belief.

Wm P. Hunt 30

Name: William P. Hunt

Title: Vice President Public Policy  
Level 3 Communications, LLC

SWORN TO AND SUBSCRIBED before me on the 20<sup>th</sup> day of October, 2006.

Kim Bartlett

Notary Public

My commission expires: 9.30.2010

